

House Bill 1350

By: Representative Heard of the 104th

A BILL TO BE ENTITLED
AN ACT

To amend provisions of the Official Code of Georgia Annotated relating to dealers and franchises of motorcycles; to amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, so as to exempt motorcycles from the definition of motor vehicle relative to motor vehicle franchises; to provide for definitions; to provide purposes and policies to protect motorcycle dealers; to provide for sales of such vehicles; to provide for changing or terminating sales areas only for good cause; to provide for notice of termination or substantial change to a sales area; to provide for repurchase of inventories by the grantor upon termination of a dealership; to provide that it is illegal for a grantor to coerce a dealer to purchase its parts or accessories; to provide that a grantor must approve a sale of a dealership if the terms are reasonable; to provide for succession of the dealership to the dealer's named beneficiaries; to provide for warranty obligations; to provide for dispute resolution; to prohibit certain distributions or sales; to provide for applicability; to provide an effective date; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, is amended by revising paragraph (10) of Code Section 10-1-622, relating to definitions relative to motor vehicle franchises, as follows:

"(10) 'Motor vehicle' means every self-propelled vehicle intended primarily for use and operation on the public highways, except farm tractors and other machines and tools used in the production, harvesting, and care of farm products, construction equipment, motorcycles as defined in paragraph (7) of subsection (a) of Code Section 10-1-725 and recreational vehicles as defined in paragraph (5) of subsection (a) of Code Section 10-1-679."

SECTION 2.

Said chapter is further amended by inserting a new Article 25A to read as follows:

"ARTICLE 25A

10-1-725.

(a) As used in this article, the term:

(1) 'All-terrain vehicle' means any motorized vehicle designed for off-road use which is equipped with three or more low pressure tires and with a seat to be straddled by the operator and with handlebars for steering control.

(2) 'Community of interest' means a continuing financial interest between the grantor and the grantee in either the operation of the dealership business or the marketing of such goods or services.

(3) 'Dealer' means a person who performs retail sales of new motorcycles situated in Georgia.

(4) 'Franchise' means an oral or written agreement for a definite or indefinite period of time in which a manufacturer grants to a motorcycle dealer permission to use a trade name, service mark, or related characteristic and in which there is a community of interest in the marketing of motorcycle products or services related thereto at wholesale or retail, whether by leasing, sale, or otherwise.

(5) 'Grantor' means a person who grants a motorcycle dealership.

(6) 'Moped' or 'scooter' means a motor driven cycle equipped with two wheels, with or without foot pedals to permit muscular propulsion, and an independent power source providing a maximum of two brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement shall be 3.05 cubic inches (50 cubic centimeters) regardless of the number of chambers in such power source. The power source shall be capable of propelling the vehicle, unassisted, at a speed not to exceed 30 miles per hour (48.28 kilometers per hour) on level road surfaces and shall be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged.

(7) 'Motorcycle' means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor, all-terrain vehicle, utility vehicle, and moped.

(8) 'Motorcycle dealer' means a person who is a grantee of a motorcycle dealership situated in Georgia.

(9) 'Motorcycle dealership' means an established place of business engaged in the marketing of new motorcycle products or services related thereto at wholesale or retail,

whether by leasing, sale, or otherwise, and which is marked by an appropriate permanent sign; which has a working telephone with a telephone number listed in the local phone directory; which derives at least 75 percent of its revenue from the sale of new motorcycles and from the sale of motorcycle related products and services; and which provides services or repair for such vehicles on site; provided, however, that any dealer as defined in Code Section 13-8-12 and subject to the provisions of Article 2 of Chapter 8 of Title 13 and which is also engaged in the marketing of new motorcycle products or services related thereto shall not be subject to the criteria of this paragraph requiring that at least 75 percent of its revenue be derived from the sale of new motorcycles and from the sale of motorcycle related products and services.

(10) 'Person' means a natural person, partnership, joint venture, corporation, or other entity.

(11) 'Relevant market area' means the larger of the following:

(A) The area of responsibility defined in the franchise agreement of an existing dealer; or

(B) The geographic area within a radius of ten miles of any existing dealer of the same line or make of vehicle that is located in a county with a population of more than 200,000 persons according to the most recent United States decennial census or within a radius of 15 miles of an existing dealer of the same line or make of vehicle that is located in a county with a population of 200,000 or fewer persons according to the most recent United States decennial census.

(12) 'Tractor' means any self-propelled vehicle designed for use as a traveling power plant or for drawing other vehicles but having no provision for carrying loads independently.

(13) 'Utility vehicle' means any motorized vehicle designed and manufactured for off-road use only which has a gross vehicle weight of 850 pounds or more and which is equipped with four or more low pressure tires, with one or more bench or bucket seats for the operator and passengers, with a steering wheel for steering control, and with a cargo bed.

(b) For purposes of this article when determining whether there is good cause for a proposed action, the trier of fact shall consider:

(1) The volume of the affected dealer's business in the relevant market area;

(2) The nature and extent of the dealer's investment in its business;

(3) The adequacy of the dealer's service facilities, equipment, parts, supplies, and personnel;

(4) The effect of the proposed action on the community;

(5) The extent and quality of the dealer's service under motorcycle warranties; and

1 (6) The dealer's performance under the terms of its franchise agreement.

2 10-1-725.1.

3 (a) This article shall be reasonably construed and applied to promote its underlying
4 remedial purposes and policies.

5 (b) The underlying purposes and policies of this article are:

6 (1) To promote the compelling interest of the public in fair business relations between
7 motorcycle dealers and grantors and in the continuation of motorcycle dealerships on a
8 fair basis;

9 (2) To protect motorcycle dealers against unfair treatment by grantors who inherently
10 have superior economic power and superior bargaining power in the negotiations of
11 motorcycle dealerships;

12 (3) To provide motorcycle dealers with rights and remedies in addition to those existing
13 by contract or common law; and

14 (4) To govern all franchise agreements for motorcycle dealerships, including any
15 renewals or amendments, to the full extent consistent with the Constitutions of Georgia
16 and the United States.

17 (c) The effect of this article may not be varied by contract or agreement. Any contract or
18 agreement purporting to do so is void and unenforceable to that extent only.

19 10-1-725.2.

20 Sales of motorcycles by grantors or distributors shall be in accordance with published
21 prices, charges, and terms of sale in effect at any given time.

22 10-1-725.3.

23 No grantor, directly or through any officer, agent, or employee, may terminate, cancel, fail
24 to renew, or substantially change the area of sales responsibility of a motorcycle dealership
25 agreement without good cause. The burden of proving good cause shall be on the grantor.

26 10-1-725.4.

27 Except as provided in this Code section, a grantor shall provide a motorcycle dealer written
28 notice of intent to terminate, cancel, or nonrenew. The motorcycle dealer shall have 90
29 days following receipt of notice in which to rectify any claimed deficiency. If the
30 deficiency is rectified within 90 days, the notice shall be void. The notice provisions of
31 this Code section shall not apply if the reason for termination, cancellation, or nonrenewal
32 is insolvency; the occurrence of an assignment for the benefit of creditors; bankruptcy;
33 failure of the dealer to conduct its customary sales and service operations during its

1 customary business hours for seven consecutive business days, except for acts of God or
2 circumstances beyond the control of the dealer; conviction of the dealer, general manager,
3 or managing executive or any owner with a substantial interest therein of any crime which
4 materially relates to the operation of the dealership or any felony which is punishable by
5 imprisonment; suspension or revocation for a period of more than 14 days of any license
6 which the dealer is required to have to operate a dealership; or fraud or intentional
7 misrepresentation by the dealer that materially affects the franchise. In such event, the
8 termination, cancellation, or nonrenewal shall become effective 15 days after receipt of
9 notice by the dealer.

10 10-1-725.5.

11 (a) If a motorcycle dealership franchise agreement is terminated, canceled, or not renewed
12 without good cause by the grantor, the grantor, at the option of the motorcycle dealer, shall
13 repurchase:

14 (1) All inventories of motorcycles, parts, and accessories sold by the grantor to the
15 motorcycle dealer for resale; and

16 (2) All diagnostic equipment, special tools, other equipment and machinery, and signage
17 as were required to meet the dealer's service responsibilities in accordance with
18 manufacturer's guides and applicable customer service bulletins and signs sold under the
19 motorcycle dealership agreement.

20 (b) The repurchase price shall be at the original invoice price plus freight, destination,
21 delivery, and distribution charges and sales taxes incurred by the motorcycle dealer. The
22 grantor shall pay the dealer within 30 days of receipt of the returned items. This Code
23 section shall apply only to merchandise with a name, trademark, label, or other mark on it
24 which identifies the grantor or with proof of purchase from the grantor.

25 (c) The grantor shall reimburse the dealer for 100 percent of the invoiced cost to the dealer
26 by the grantor, including transportation, of all new current model year and new current year
27 motorcycle inventory acquired from the manufacturer which has not been materially altered
28 or damaged and of all new motorcycle inventory not of the current model year which has
29 not been materially altered or damaged, provided that the noncurrent model year vehicles
30 were acquired from the manufacturer within 12 months prior to the effective date of the
31 termination, cancellation, or nonrenewal.

32 (d) The grantor shall reimburse the dealer for 100 percent of the current net prices as
33 published in the grantor's current price lists or catalogs on accessories and parts, including
34 superseded parts, plus 7 percent of the current net price of all grantor's accessories and
35 parts returned to compensate the dealer for handling, packing, and loading the parts.

10-1-725.6.

It shall be unlawful for any grantor, directly or through any officer, agent, or employee:

(1) To coerce, or attempt to coerce, any dealer to accept delivery of any parts or accessories or any other commodities which have not been ordered by such dealer; or

(2) To coerce, or attempt to coerce, any dealer to enter into an agreement with such grantor or do any other act unfair to such dealer by threatening to cancel any motorcycle dealership franchise agreement existing between such grantor and such dealer.

10-1-725.7.

It shall be unlawful for any grantor to prevent or refuse to approve the sale or transfer of the ownership of a motorcycle dealership by the sale of the business assets, stock transfer, or otherwise or a change in executive management or principal operator of the dealership if the new owner, principal operator, or management is creditworthy, has not been convicted of a felony, and is properly licensed; the sale or transfer will not result in a relocation of the business; and the sale or transfer is otherwise reasonable under the circumstances. The burden of proving that any sale or transfer is not reasonable shall be on the grantor; provided, however, that the grantor and the dealer may mutually agree to a relocation of the business.

10-1-725.8.

(a) It shall be unlawful for any grantor to fail to provide a motorcycle dealer with an opportunity, at the time of signing a motorcycle dealership franchise agreement or at a reasonable time thereafter, to designate a member of his or her family as a successor to the dealership in the event of the death or incapacity of the dealer. A dealer may from time to time during the term of the franchise agreement change the beneficiary by providing a written notification to the manufacturer.

(b) It shall be unlawful to prevent or refuse to honor the succession to a dealership by a member of the family of the deceased or incapacitated dealer unless the grantor has provided to the member of the family so designated written notice of its objections. The burden of proving that such transfer is not reasonable shall be on the grantor.

(c) Grounds for objection shall be lack of creditworthiness, conviction of a felony, inability to obtain necessary licenses by the beneficiary, lack of required licenses, or other conditions which make such succession unreasonable under the circumstances; but the grantor shall bear the burden of proving the unreasonableness of such succession. No member of the family of the deceased or incapacitated dealer may succeed to a motorcycle dealership unless the succession to such dealership will not involve, without the grantor's consent, a relocation of the business.

1 10-1-725.9.

2 (a) Each grantor shall specify in writing to each of its motorcycle dealers licensed in
3 Georgia the dealer's obligation for preparation, delivery, and warranty service on its
4 products; shall compensate the dealer for warranty service required of the dealer by the
5 manufacturer; and shall provide the dealer the schedule of compensation to be paid to such
6 dealers for parts, work, and service in connection with warranty service and the time
7 allowances for the performance of such work and service. In no event shall such schedule
8 of compensation fail to include reasonable compensation for diagnostic work as well as
9 repair service and labor.

10 (b) Time allowances for the diagnosis and performance of warranty work and service shall
11 be reasonable and adequate for the work to be performed. In the determination of what
12 constitutes reasonable compensation under this Code section, the principal factors to be
13 given consideration shall be the prevailing wage rates being paid by the dealer and the
14 prevailing labor rate being charged by the dealer in the community in which the dealer is
15 doing business. In no event shall such compensation of a dealer for warranty service be
16 less than the rates charged by the dealer for like service to retail customers for nonwarranty
17 service and repairs so long as such rates are reasonable, unless the grantor conditions
18 payment of such compensation upon the dealer's completion of factory training and the
19 dealer has failed to complete such training.

20 (c) A grantor shall reimburse the dealer for warranty parts at actual wholesale costs plus
21 a minimum 25 percent handling charge and the cost, if any, of freight to return warranty
22 parts to the manufacturer. Warranty audits of dealer records may be conducted by the
23 grantor on a reasonable basis. A grantor must disapprove warranty claims in writing within
24 30 days of the date of submission by the dealer in the manner and form prescribed by the
25 grantor. Claims not specifically disapproved in writing within this 30 days shall be
26 construed to be approved and shall be paid or credited within 45 days.

27 (d) Dealer claims for warranty compensation shall not be denied except for good cause
28 such as performance of nonwarranty repairs, lack of material documentation, fraud, or
29 misrepresentation. Claims for dealer compensation shall be paid within 30 days of dealer
30 submission or rejected in writing for stated reasons.

31 (e) It shall be a violation of this article for any grantor to:

32 (1) Fail to perform any of its warranty obligations with respect to a motorcycle and
33 motorcycle components;

34 (2) Fail to assume all responsibility for any liability resulting from structural or
35 production defects;

1 (3) Fail to include written notices of factory recalls to vehicle owners and dealers and the
2 expected date by which necessary parts and equipment will be available to dealers for the
3 correction of such defects;

4 (4) Fail to compensate any of its motorcycle dealers licensed in Georgia for repairs
5 effected by such dealer of merchandise damaged in manufacture or transit to the dealer
6 where the carrier is designated by the manufacturer, factory branch, distributor, or
7 distributor branch;

8 (5) Fail to compensate its motorcycle dealers licensed in this state for warranty parts,
9 work, and service in accordance with the schedule of compensation provided the dealer
10 pursuant to subsection (a) of this Code section or for legal costs and expenses incurred
11 by such dealers in connection with warranty obligations for which the grantor is legally
12 responsible or which the grantor imposes upon the dealer;

13 (6) Misrepresent in any way purchases of motorcycles that contain warranties with
14 respect to the manufacture, performance, or design of the vehicles which are made by the
15 dealer, either as warrantor or co-warrantor; or

16 (7) Require the dealer to make warranties to customers in any manner related to the
17 manufacture of a motorcycle.

18 (f) Notwithstanding the terms of any agreement, it shall be a violation of this article for
19 any grantor to fail to indemnify and hold harmless its motorcycle dealers against any losses
20 or damages arising out of claims, costs, judgments, expenses including reasonable
21 attorney's fees, or suits relating to the manufacture, assembly, or design of motorcycles,
22 parts, or accessories, or other functions by the grantor beyond the control of the dealer,
23 including, without limitation, the selection by the grantor of parts or components for the
24 motorcycle or any damages to merchandise occurring in transit to the dealer where the
25 carrier is designated by the grantor. The dealer shall give notice to the grantor of pending
26 suits in which allegations are made which fall under within this subsection whenever
27 reasonably practicable to do so. Any motorcycle dealer franchise agreement issued to,
28 amended, or renewed for motorcycles in Georgia on or after July 1, 2008, shall be deemed
29 to incorporate provisions consistent with the requirements of this subsection.

30 (g) Whenever a new motorcycle is damaged in transit when the carrier or means of
31 transportation is determined by the grantor or distributor or whenever a motorcycle is
32 otherwise damaged prior to delivery to the motorcycle dealer or if a new motorcycle is
33 found to have substantial box or chassis defects upon arrival at the motorcycle dealership,
34 the dealer must notify the grantor or distributor of such damage or such defects within ten
35 business days from the date of delivery or within a reasonable amount of additional time
36 or, if longer, such time as specified in the motorcycle dealership franchise agreement and
37 either:

(1) Request from the manufacturer or distributor authorization to replace the components, parts, and accessories damaged or otherwise correct the damage; or

(2) Reject the vehicle.

If the dealer exercises the option to refuse delivery of the vehicle, the motorcycle manufacturer must immediately repurchase such vehicle.

(h) If the grantor or distributor refuses or fails to authorize repair of such damage within ten days after receipt of notification or if the dealer rejects a motorcycle because of damage, ownership of the new motorcycle shall revert to the grantor or distributor and the motorcycle dealer shall have no obligations, financial or otherwise, with respect to such motorcycle.

(i) All manufacturers, distributors, and suppliers of motorcycle components shall be subject to the provisions of this article.

10-1-725.10.

If any grantor violates this article, a motorcycle dealer may bring an action against such grantor in a court of competent jurisdiction in the county of the motorcycle dealer for damages sustained as a consequence of the grantor's violation, together with the actual costs of the action including reasonable attorney's fees; and the dealer also may be granted injunctive relief against unlawful termination, cancellation, or nonrenewal and refusal to permit transfer of ownership in accordance with this article.

10-1-725.11.

In any action brought by a motorcycle dealer against a grantor under this article, any violation of this article by the grantor shall be deemed an irreparable injury to the motorcycle dealer for determining if a temporary injunction should be issued.

10-1-725.12.

It shall be unlawful for a grantor to establish a new motorcycle dealership unless the dealer meets the requirements and definitions provided in this article.

10-1-725.13.

It shall be unlawful for any dealer to sell or distribute any new motorcycle in Georgia unless the dealer has a franchise dealership agreement with a grantor with the express right to sell or distribute motorcycles in Georgia, operates a motorcycle dealership, and meets all of the requirements and definitions provided in this article. Any dealer who does not meet the requirements of this article may participate in events where motorcycles are

exhibited or demonstrated and seminars are provided but shall be prohibited from contracting to sell or distribute motorcycles to the public.

10-1-725.14.

(a) Nothing contained in this article is intended to discourage or prohibit any person or dealer from entering into a franchise agreement with any manufacturer.

(b) Nothing contained in this article shall prohibit a manufacturer from prohibiting the sale of its products except through an authorized franchisee.

(c) The provisions of this article shall not apply to any seller's agreement or contract when the manufacturer and the dealer enter into such seller's agreement or contract after meaningful and genuine negotiations of the terms and conditions of the agreement or contract. The burden of proof shall be on the manufacturer to prove that genuine negotiations took place between the parties. The provisions of this article shall apply if, in order to be awarded a franchise, the dealer had no realistic ability to negotiate the terms and conditions of the agreement or the dealer's only option was to sign a prepared agreement. Genuine or realistic negotiations shall include, but not be limited to, negotiations regarding the areas of responsibility and the terms of the agreement."

SECTION 3.

This Act shall become effective on July 1, 2008, and shall apply to any agreement entered into on or after July 1, 2008, and to any renewal, modification, or amendment made on or after July 1, 2008, to any such agreement.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.